Jack Thompson Oldsmobile, Inc. *and* American Federation of Professional Salesmen. Case 13-CA-19175

May 15, 1981

DECISION AND ORDER

On August 28, 1980, Administrative Law Judge Richard L. Denison issued the attached Decision in this proceeding. Thereafter, Respondent and General Counsel filed exceptions and supporting briefs and General Counsel filed an answering brief to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order, as modified below.[4]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge, in finding that Respondent unilaterally revised commission rates on November 7, 1979, found that new car salesman Salvatore Floramo made less money after that date, but failed to find that the record establishes that Respondent's unlawful change in the method for computing commission rates was the cause of Floramo making less money. We so find.

[3] General Counsel excepts to the Administrative Law Judge's failure to require Respondent to pay backpay to unit employees for the losses, if any, they may have suffered as the result of Respondent's unlawful unilateral changes. Inasmuch as it is the Board's practice to order a respondent to make its employees whole for the loss of pay, if any, they may have suffered by reason of a respondent's unilateral changes in their terms and conditions of employment, we find merit to General Counsel's exception. See *Murphy Motors, Inc.*, 178 NLRB 15 (1969). Accordingly, the Administrative Law Judge's recommended remedy is hereby revised to provide for such a backpay order with backpay to be computed on the basis of the commissions they would have received if Respondent had not made such unilateral changes, with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[4] Respondent, in its brief to the Administrative Law Judge, contended for the first time that the instant case be deferred to the grievance and arbitration procedure of the parties' collective-bargaining agreement in exception 20, citing the page and line numbers of the Administrative Law Judge's Decision where the contention was rejected, excepting to the "failure to find that Manhatton and the charging party should have complied with the mutually agreed grievance and arbitration procedure in the labor contract." In its brief in support of its exceptions Respondent does not urge Board deferral of any issue in the instant case, or even discuss the question of such deferral. Rather, the thrust of its argument is that the management-rights clause gave it the right to make changes in the computation of commissions, and that employee Manhatton by quitting instead of availing himself of the grievance and arbitration procedure forfeited his statutory and contractual rights. In these circumstances, we conclude that, notwithstanding Respondent's aforementioned citation to the Administrative Law Judge's Decision, Respondent is not excepting to the Admnistrative Law Judge's refusal to apply the principles of *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971). In any event, the issue of deferral was not raised until after the hearing. Thus, we find that it was not fully litigated and consequently there is no basis for determining whether deferral is appropriate. *MacDonald Engineering Co.*, 202 NLRB 748 (1973). In addition, as the complaint alleges a violation of Sec. 8(a)(3) of the Act, Chairman Fanning and Member Jenkins would find deferral inappropriate. *General American Transportation Corporation*, 228 NLRB 808 (1977). Member Zimmerman has no opinion with respect to *General American Transportation Corporation*.

The Administrative Law Judge recommended that the Board issue a broad cease-and-desist order requiring Respondent to cease and desist from violating the Act "in any other manner." However, we do not find Respondent's conduct in this case egregious enough to warrant the issuance of such an order. Consequently, we shall substitute the Board's narrow order language, requiring Respondent to cease and desist from violating the Act "in any like or related manner," for the provision recommended by the Administrative Law Judge. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Jack Thompson Oldsmobile, Inc., Oak Lawn, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the words "in any like or related manner" for the words "In any other manner" in paragraph 1(c).

2. Insert the following as paragraph 2(c) and reletter former paragraph 2(c) and the subsequent paragraphs accordingly:

"(c) Make whole the employees in the appropriate unit for the loss of pay, if any, they may have suffered by reason of the unilateral changes in their terms and conditions of employment, in the manner set forth in the Board's Decision and Order."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties had the opportunity to present their evidence, it has been decided that we violated the law, and we have been ordered to post this notice. We intend to carry out the Order of the Board and abide by the following:

WE WILL NOT unilaterally change a method of computing our salesmen's commissions without notice to or bargaining with the American Federation of Professional Salesmen.

WE WILL NOT discharge, punish, or otherwise discriminate against Robert Manhatton, or any other employee, because they have engaged in union activities or protected concerted activities for their mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

WE WILL offer Robert Manhatton immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of earnings he may have suffered as a result of our discrimination against him, with interest.

WE WILL make whole the employees in the appropriate unit for the loss of pay, if any, they may have suffered by reason of the unilateral changes in their terms and conditions of employment, with interest.

WE WILL restore the method of computing our salesmen's commissions to that which existed prior to the institution of the commission penalty provision of our turnover policy on September 1, 1979, and WE WILL, upon request, bargain collectively in good faith with the certified representative of our employees in the appropriate collective-bargaining unit concerning any changes in wages, hours, working conditions, and other terms and conditions of said employees. The collective-bargaining unit is:

> All new and used car salesmen, excluding office and plant clericals, automobile mechanics, semiskilled help, parts department employees, professional employees, guards and supervisors as defined in the Act.

JACK THOMPSON OLDSMOBILE, INC.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge: This case was heard at Chicago, Illinois, on April 1, 1980, based on an original charge filed by American Federation of Professional Salesmen, hereafter referred to as the Union, on October 4, 1979.[1] The complaint, issued November 7, and thereafter amended, alleges that the Respondent violated Section 8(d) and Section 8(a)(5), and (1) of the Act by unilaterally modifying its collective-bargaining agreement with the Union and its employees' wages and working conditions, and by unilaterally instituting a rule which penalized salesmen one-half of their commission on a sale if they failed to follow Respondent's rule requiring the referral of vehicle purchasers to company officials responsible for selling dealer financing and insurance. The complaint also alleges the violation of Section 8(a)(1) and (3) of the Act by the discharge or constructive discharge of Robert Manhatton on September 8. The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint.

Upon the entire record in the case, including my observation of the witnesses and consideration of the briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the answer admits that, at all times material herein, the Respondent is a Delaware corporation with an office and place of business in Oak Lawn, Illinois, where it is engaged in the business of the retail sale of automobiles and related products. During the past calendar year, a representative period, the Respondent derived gross revenues in excess of $500,000 from its business operations. During the same period of time the Respondent purchased and received at its Oak Lawn, Illinois, facility, products, goods, and materials valued in excess of $50,000 directly from points outside the State of Illinois. As admitted in the answer, I find that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. APPROPRIATE UNIT AND EXCLUSIVE REPRESENTATIVE STATUS

As alleged in the complaint and admitted in the answer I find that since on or about March 6, 1975, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the following appropriate collective-bargaining unit and has been recognized as such by the Respondent as embodied in successive collective-bargaining agreements. The appropriate unit is:

> All new and used car salesmen, excluding office and plant clericals, automobile mechanics, semi-skilled help, parts department employees, professional employees, guards and supervisors as defined in the Act.

[1] All dates are in 1979 unless otherwise specified.

IV. THE UNFAIR LABOR PRACTICES

The facts concerning the events which give rise to the issues in this case are, for the most part, undisputed. Alleged discriminatee Robert Manhatton was one of three used-car and seven new-car salesmen employed at the Respondent's Oak Lawn, Illinois, automobile dealership whose wages, hours, and conditions of employment were governed by the Union's collective-bargaining agreement with the Respondent. Since 1972 the Respondent has maintained a policy, which has never been contested by the Union, requiring salesmen to refer or "turn over" all customers to the financing and insurance department business manager upon completion of a sale, in order that the Respondent will have an opportunity to increase the revenue derived from the sale by selling the customer dealer financing, and life, accident, and maintenance insurance. On July 10, 1978, this policy was codified in the Respondent's "Salesman's Policy Manual." Thereafter, statistical information maintained by the Respondent revealed that the "turnover" policy was not yielding the desired results. Thus, when the August statistical study revealed that 73 percent of that month's vehicle purchasers had not been "turned over," the Respondent decided to alter the policy by adding an enforcement feature, which was announced at a salesmen's meeting held on the morning of Saturday, September 1. Assistant General Manager Richard "Dick" Sisson handed out the revised policy which penalized salesmen one-half of the commission on each deal wherein they failed to turn over a customer to one of the managers upon the sale of a vehicle. The Respondent did not notify or offer to bargain with the Union about the rule change.

On September 4, the Respondent's president, John E. Thompson, wrote a letter to Merlin W. Griffith, the Union's president, stating that "Due to a change in business climate and tremendous inflationary pressures, we believe it necessary to open negotiations on our Salesmen's Union Contract. Please reply in writing as soon as possible." On September 7, Griffith answered, acknowledging receipt of Thompson's letter, notifying the Company of his willingness to meet and negotiate, and requesting a time, date, and place.

Robert Manhatton did not attend the September 1 salesmen's meeting, but acknowledged that he became aware of the altered policy through a fellow salesman. In any event, between September 1 and 5, Manhatton "turned over" customers, as required. At the time of the incident in question, Manhatton was splitting his commissions with salesman Charles Boerst, in accordance with a practice approved by the Respondent. Boerst was on vacation. On the evening of September 4 Manhatton showed a truck to a customer named Warner. At 12:30 p.m., on September 5, Warner came to Manhatton's office at the dealership, presented a check for the truck, and insisted on immediate delivery. Manhatton was the only salesman present at the time and had three other customers in his office while he was in the process of concluding a sale to one of them. Warner brushed aside Manhatton's references to dealer financing and insurance, stating that he had his own insurance, and desired no financing. In his haste, Warner rejected the usual offer of dealership assistance in purchasing license plates. According to Manhatton he attempted to locate a manager, in order to comply with the turnover policy but, since it was lunch time, he was unable to do so. He testified that General Manager Charles Thompson, Assistant General Manager Sisson, and Business Managers John Thompson, and George Niemeyer were all absent, and that one of the other three customers in his office, who desired dealer financing, was awaiting their return. Since Warner did not desire further assistance and was in a hurry, Manhatton concluded the cash transaction and delivered the vehicle at approximately 12:45 p.m.[2]

The next 2 days passed without incident. On Saturday, September 8, Manhatton discovered that the commission on the Warner sale had been halved when he saw the paperwork for the transaction on the desk in Sisson's office.[3] Manhatton noticed a notation "No T.O.—was not seen by J.T. or G.J." At or about 4:45 p.m., just before the dealership closed for the day, Manhatton confronted Charles Thompson with the commission reduction. Thompson confirmed that the commission had been reduced because Manhatton had not "turned over" Warner. Thompson ignored Manhatton's claim that no business manager was available at the time and that Warner was in a hurry. He stated that it did not make any difference, and when Manhatton renewed his efforts to explain, retorted, "I don't want to hear it." Then the conversation became heated with both men raising their voices. Manhatton insisted that withholding money from an employee was unlawful. Thompson said, "I'm doing it." Then Manhatton stated, "You can't do that, because that is one of the reasons we have a union contract," to which an enraged Thompson shouted "I don't give a s——— about the Union, and if you don't like it, get the hell out." Manhatton stalked out of the office and headed toward his automobile but, after thinking about the matter for a time, returned to Thompson's office and asked, "Is this really the way you want it?" Thompson replied, "Yes."[4]

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[2] Although I credit, generally, Manhatton's testimony, and believe that he made some effort to locate one of the managers, I do not believe, as contradicted by the testimony of Charles Thompson and Richard Sisson, that not one of the managers was anywhere on the Respondent's premises at the time the Warner deal was concluded. Charles Thompson testified, without contradiction, that it is the Respondent's practice to be certain that a manager is present on the premises at all times during the workday. The logic and necessity for following this practice in the type of business conducted by the Respondent convinces me that it is followed.

[3] Dick Sisson and Charles Thompson occupy adjacent offices, and some interchange between them occurs. Furthermore, the salesmen come and go freely from these offices during the workday in connection with negotiating and concluding various transactions.

[4] The findings concerning this conversation are based on the credited testimony of Robert Manhatton, who impressed me as a generally honest witness possessed of an excellent memory for details. Except where otherwise indicated, where a conflict occurs between the testimony of Manhatton and that of Charles Thompson, Manhatton is credited. Charles Thompson displayed a poor memory for details at critical points and a tendency to generalize and gloss over important matters in what appeared to me to be an effort to tell a winning story. His testimony contained inconsistencies which were not explained. Respondent's efforts to corroborate Charles Thompson's testimony through that of Richard Sisson were severely marred by Sisson's admission that he left his adjacent office for a substantial period of time during the Manhatton-Thompson argument. Finally, I find that the question of whether Manhatton's or Thompson's version of this conversation is to be believed is immaterial to

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A few days later Manhatton called Union President Griffith and notified him of the rule change imposing the commission penalty and what had happened to him as a result of that change. Since no union steward, official, or agent with authority is employed by the Respondent, this was the first notice that the Union had of the change. Manhatton did not file a grievance.[5] On September 10, Manhatton phoned Thompson, who was not in. He called again on September 11, and after a brief period during which Thompson's secretary left the phone, was invited to come in and talk to Company President John Thompson in person. When Manhatton arrived, however, John Thompson was not there. Manhatton returned home and continued his efforts to call John Thompson at various times of the day until September 14 when he returned to the Respondent's premises and met Charles Thompson in the used-car lot. Manhatton asked if they could work out their difficulties, but Thompson declined. Then Manhatton asked how he obtained his money from the pension fund if he was no longer working there. Thompson obtained the forms, which his secretary typed and Manhatton signed. Manhatton asked for his reduced share of the Warner Commission which Thompson refused to pay. After turning in his demonstration automobile, Manhatton left the premises for the last time.

On September 14, salesman Bill McGovern was also penalized one-half of his commission on a transaction for forgetting to "turn over" the customer in accordance with the revised rule. On November 7, the Respondent further revised its system for paying salesmen's commissions on dealer financed transactions by placing the financing and insurance department of the dealership in the hands of a firm named Carl Singer and Associates. On that date, at a sales meeting held at the Oak Lawn Holiday Inn, Charles Thompson introduced Singer who presented the new plan to the assembled sales force. In sum, the plan, in evidence as General Counsel's Exhibit 11, revises commissions paid to salesmen for new and used car transactions on various types of financing and insurance sold to the customer by the dealership. Each salesman was given a copy of the new plan which was to be effective immediately. New-car salesman Salvatore Floramo testified without contradiction that he has made less money since November 7, 1979, than he did before the institution of the November 7 plan.

The Respondent contends that the September 1 change in its turnover policy was an "adjustment" to an existing policy and not an unilateral change. Furthermore the Respondent argues that even if the Respondent's conduct is construed as an unilateral action, it was privileged by the management rights clause of the collective-bargaining agreement in which it is urged the Union waived its right to negotiate with respect to such a change. The Respondent also argues that the Union did not utilize the grievance procedure of the collective-bargaining contract and that this matter is deferrable under the Board's decision in *Collyer Insulated Wire*, 192 NLRB 837 (1971). Finally, the Respondent argues that the institution of the November 7 compensation plan was not a "significant change" in the working conditions of its employees. With respect to Robert Manhatton the essence of the Respondent's argument is that Manhatton quit voluntarily and was not discharged or constructively discharged.

The General Counsel argues that the institution of the commission penalty provision on September 1 and the new compensation plan for salesmen on November 7 were unilateral changes without notice to or bargaining with the salesmen's collective-bargaining representative, and as such violate Section 8(a)(1) and (5) of the Act. The General Counsel also contends that Robert Manhatton was discharged or, in the alternative constructively discharged for protesting the enforcement of the newly promulgated September 1 commission penalty provision, and was therefore terminated because of his union and protested concerted activities in violation of Section 8(a)(1) and (3) of the Act. I agree. It is conceded that the Union was not notified or given an opportunity to bargain about either the September 1 or November 7 changes, both of which directly and substantially affected the wages of the salesmen. It is almost axiomatic that there is nothing more basic to a collective-bargaining contract than the subject of wages. This is undoubtedly why, in the pecking order of labor relations parlance, the word "wages" ranks first in the often quoted definition of collective bargaining in Section 8(d) of the Act which admonishes employers and employer representatives "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . ." Thus, the Board has often held that an employer who takes it upon himself to make revisions in his employees' wage structure, or penalize employees in terms of reduced wages without notice to or bargaining with the duly certified representative of his employees, commits an unlawful unilateral change. Such action goes beyond a mere "alteration or adjustment." Furthermore, there is nothing in the very broad management rights clause, Article X, of the collective-bargaining agreement which specifically gives the Respondent the right to alter its employees' wages without consultation or bargaining. The Board has long held that any waiver of employees' rights must be clear and unmistakable. The language of Article X does not in any way meet this test. I find that the Respondent violated Section 8(a)(1) and (5) of the Act by making unilateral changes on September 1 and November 7 which directly affected its salesmen's wages.

I have found that the credible evidence shows that on September 8, during the confrontation between Robert Manhatton and Charles Thompson, Mahatton protested the application of the September 1 commission penalty provision an unlawful and a contravention of the union contract. Charles Thompson's overall reaction was that he did not want to hear any explanations, he was invoking the penalty provision, he did not care about the Union, and if Manhatton did not like it he could get out. Thus, Manhatton was faced with the alternative of ac-

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the issue of the legality of Manhatton's discharge under the Act since, in any event, Manhatton's only alternative was to accept the penalty or leave.

[5] The collective-bargaining agreement contains a grievance procedure ending with final and binding arbitration limited to the specific issues presented to the arbitrator by the parties.

cepting the enforcement of an unlawful unilateral change or quitting. He chose the latter course of action which I find to constitute a constructive discharge under the Act as interpreted by the Board in numerous decisions. The Board has frequently held that when an employee is discharged or forced to quit for violating an unlawful rule, the employee comes within the scope of the Act's protection. Here, not only was Manhatton engaging in union activity by reminding Thompson that his action violated the union contract, but also Manhatton was engaging in protected concerted activity by protesting an unlawful unilateral change which affected salesmen as a group. This latter finding is clearly illustrated, as the General Counsel points out, by the fact that Manhatton was splitting commissions with Boerst whose commission was also reduced by the invocation of the penalty provision. Further, the fact that thereafter other salesmen were also penalized for violating the turnover policy, thereby proving that Manhatton was not singled out for punishment, does not negate Respondent's violation of Section 8(a)(1) and (3) of the Act by constructively discharging Manhatton on September 8. Accordingly, consistent with recent Board decisions, I reject the Respondent's alternative contention that, in any event, this case should have been deferred to the grievance-arbitration procedure of the collective-bargaining agreement under the Board's decision in *Collyer Insulated Wire, supra*.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All new and used car salesmen, excluding office and plant clericals, automobile mechanics, semi-skilled help, parts department employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since on or about March 6, 1975, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit described above in paragraph 3, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment. By unilaterally changing on September 1 and November 7 the method by which its salesmen's commissions are computed and thereafter enforcing said changes, the Respondent violated Section 8(a)(1) and (5) and Section 8(d) of the Act.

5. By enforcing the unlawful unilaterally instituted commission penalty provision of September 1, with respect to Robert Manhatton on September 8, thereby forcing Manhatton to accept the Respondent's unlawful action or quit, the Respondent constructively discharged Robert Manhatton in violation of Section 8(a)(1) and (3) of the Act.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having discriminatorily discharged Robert Manhatton, I find it necessary to order that the Respondent offer him immediate and full reinstatement with backpay computed on a quarterly basis, plus interest, as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[6]

Having found that the Respondent violated Section 8(a)(1) and (5) and Section 8(d) of the Act by unilaterally changing the method of computing its salesmen's commissions, as discussed above, I find it necessary to order the Respondent to restore the method of computing salesmen's commissions in effect prior to the institution of the commission penalty provision promulgated on September 1, 1979, and, if the Respondent still desires such changes, to bargain in good faith with the Union concerning the changes.[7]

I shall also order the Respondent to post an appropriate notice. Since the nature of Respondent's violations strike at the heart of the collective-bargaining relationship, I consider broad cease-and-desist language warranted.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[8]

The Respondent, Jack Thompson Oldsmobile, Inc., Oak Lawn, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with the Union by unilaterally changing the method of computing its salesmen's wages without notice to and bargaining with its employees' duly certified collective-bargaining representative.

(b) Discharging or otherwise discriminating against Robert Manhatton or any other employee for the purpose of discouraging employees from engaging in union or protected concerted activities for their mutual aid or protection.

(c) In any other manner, interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of

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[6] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[7] Only Robert Manhatton was alleged as a discriminatee in this matter and the circumstances of his case were the only ones fully litigated. On the basis of the state of this record, I find the General Counsel's requested reimbursement of all salesmen penalized by Respondent's September 1 and November 7 policy changes, inappropriate.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

their own choosing, and to engage in other protected concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Robert Manhatton immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Restore the method of computing salesmen's commissions to that which existed prior to the institution of the commission penalty provision on September 1, 1979, and, if the Respondent still desires such changes, to bargain in good faith with the Union concerning the changes.

(c) Upon request, bargain collectively in good faith with the certified representative of its employees in the appropriate unit described in the section of this Decision entitled "Conclusions of Law."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility at Oak Lawn, Illinois, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed an authorized representative of Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[9] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."